SUPREME COURT OF THE UNITED STATES.

No. ~~192~~. 34.

WILLIAM E. BOWLING, PLAINTIFF IN ERROR,

vs.

MARTIN R. P. MATHIS, SHERIFF.

IN ERROR TO SUPREME COURT OF STATE OF ARKANSAS.

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Gideon, print.

south, range 3 west, and west ½ of section 13, township 13, range 3 west.

And your orator showeth, that by an act of the general assembly of this State, entitled "An act to provide for making and repairing levees in Chicot county," approved the 7th January, 1857, and an act or pretended act entitled, An act supplementary to an act passed at the present session of the general assembly, entitled An act to provide for making and repairing levees in Chicot county, approved 7th January, 1857, it is enacted and declared that there shall be levied and collected, in the county of Chicot, an annual levee tax on all alluvial lands in said county that would be benefited by levees, and which are or shall be taxable for State and county purposes for each year, commencing with the year A. D. 1857, of not less than one-fourth of one per centum, nor more than one per centum upon the assessed value of said lands, provided that no lands which shall be taxed for levee purposes to raise said tax shall he valued at less than ten dollars per acre, and each of the levee inspectors provided for by said first mentioned act shall assess all the lands in his district which are or shall be taxable under this act, and shall make and certify, under oath, to the clerk of said county, his assessment list, and the clerk shall ascertain and state upon the tax book the amount of levee tax chargeable upon each tract of land, according to the valuation of said land assessed in the manner aforesaid, and in accordance with the order of the county court, fixing the rate of the levee tax, and the sheriff shall collect said tax and account for the money in accordance with the law, and each levee inspector shall be the sole judge of what lands would be benefited by levee work, and shall embrace in his assessment list only such lands as he shall deem of that description; that the first section of said first act provides, that at each general election thereafter, there shall be a levee inspector for each levee district in said county, and that no person shall vote in the election of said levee inspectors who does not reside on or cultivate alluvial lands in said county, subject to be assessed and taxed under the provisions of said act, but that the county court of said county should, at the first term holden after the passage of said act, appoint or elect, for the county of Chicot, five inspectors, who should be qualified according to the provisions of said act, and who should constitute the board of inspectors for said county, and who should hold their office until their successors should be duly qualified; and the persons so appointed shall have power to make such rules and regulations as they may from time to time deem necessary.

By the 4th section of said act it was made the duty of said board of levee inspectors to appoint a treasurer, who shall hold his office during the pleasure of the board, to whom the sheriff, whenever called upon by him, should pay over all the money collected under said act.

By virtue of the 5th section, it was made the duty of the inspectors to lay off the county into levee districts, of suitable and convenient size for one inspector to perform the duties of, and that in all future elections there are to be elected one inspector for each of said levee districts, and every inspector is required to reside in the district for which he is elected, and be a freeholder, and that thereafter the board should consist of the whole number so elected.

By section 7 of said act it was declared to be the duty of said inspectors, at their meeting on the first Monday in May in each year, to order the levees at the most important points in each of said districts to be repaired or built.

By section 8 the levee inspectors, together with two freeholders of his district, was to lay off the levees therein directed by the board to be built, and that by section 9 he was to let out the building or repairing of levees in his district.

Section 15 of said act declares that the assessment and levy of said tax shall be made by the county court, by an order of said county court, designating the amount per acre, and the time of payment of said tax, which order shall be published four weeks in some newspaper published in the State, and a copy thereof put up at some public in each township in the county, and it shall not be necessary in any such order of assessment and levy to designate the said lands, either by numbers or other description; but upon the making and publication of such order, that all lands in said county, subject to said tax, are assessed at the rate and payable at the time specified, the same shall be considered as duly and legally assessed; and said tax, duly levied thereon, and such order being duly recorded by the clerk of the circuit court, it shall be his duty to attach a copy of the same to such tax list of the State and county revenue, which he shall make out annually, and extend the said tax against all lands subject thereto, contained in each list, in a separate column, to be provided for the purpose; and said board of levee inspectors shall have power, and it is hereby made their duty, at their annual meeting in May, to adjust the assessment and levy of said tax by hearing and deciding all questions relating to the improper assessment and taxation of any lands, or the omission to assess and tax, and legally taxable under the provisions of this act, and make additions to, or deductions from, the taxes, as charged in such list upon any lands or against any person whatsoever, and such correction and deduction may be made upon the affidavit of the person applying therefor, stating the ground upon which it is claimed, or any other information or evidence satisfactory to the board of inspectors, whose decision shall be final.

Section 16 makes it the duty of the sheriff to collect said levee tax, and in the case of a failure of the owner of the land so assessed to pay the tax due upon it, or within the time prescribed by the act,

which might be prescribed by the board of inspectors, it was made the duty of the sheriff or collector to expose the lands to sale on the first day of the next circuit court, and that if no person shall offer and bid the amount of taxes due on any lot, section, or legal subdivision of land, the same shall be struck off to, and purchased by, the treasurer of the board of inspectors, who shall receive a deed from the sheriff thereto as treasurer, and his successors in office, for the use and benefit of said levee fund.

And your orator would further show, that in accordance with the provisions of said act, or pretended act, but not at the next term after the passage thereof as required by said act, but at a special adjourned term begun and holden on the 24th day of February, A. D. 1857, the said county court of Chicot county proceeded to elect Charles W. Campbell, Daniel H. Sessions, Joseph W. Craig, Nathan Ross and Romulus Payne, whom your orator prays may be made defendants to this bill (should it be deemed necessary,) such levee inspectors, and that said Campbell, Sessions, Craig, Ross and Payne afterwards organized and elected the said Charles W. Campbell as president of their board, and as such board proceeded to divide the county into levee districts as provided in said act, and to assess said levee tax. On the 3d Monday of April, A. D. 1858, (which was in fact the first regular meeting of said county court after the passage of said act,) the said board filed in said court a list of lands which they had assesed for such levee tax, to which was affixed a valuation of said lands. And thereupon it was ordered, by said county court, that a tax of $\frac{5}{8}$ of one per centum be levied and collected on the assessed value per acre of all the alluvial lands in said county, or that are or will be benefited by levees, and which are or shall be taxable for State revenue, according to the value of said lands as fixed by the assessment of said board of levee inspectors, and the collector for the county was authorized and required to make collection of said levee tax on or before the first day of December, 1857, and by said assessment so made by said board, and returned to the county court, all improved lands on the Mississippi river, and contiguous thereto, were valued at $30 per acre, and all unimproved lands throughout the country at ten dollars per acre.

Further complaining, your orator showeth unto your honor, that the above described lands of your orator were included in said assessment; but your orator avers that they were wrongfully assessed, for if they are in any proper or legal sense alluvial lands, they are not benefited by levees within the meaning and intention of said act. Your orator submits that the benefit to lands contemplated by the legislature, and intended by the act, is an immediate and direct benefit by protection from overflow, by means of the levees, and not indirect or incidental benefit; that levees are constructed to protect the lands from overflow, and that protection is a benefit that the

legislature intended they should confer to subject the lands to said tax. But your orator avers that said lands are not, nor have not been since the settlement of the country, and perhaps for centuries before, subject to overflow, and are not protected from high water or overflow by any levee, and need none for their protection. It may be true, and your orator does not deny, that since the construction of the levees on the Mississippi river, the accessibility from that levee to them has been improved, but does not improve their fertility, nor make them dryer, or in any way more productive, is evident and clear.

It is true that by the 15 section of said act, it was made the duty of said board of levee inspectors, at their meeting in May, to adjust the assessment and levy of said tax, by hearing and deciding all questions relating to the improper assessment and taxation of any lands, and that a correction of improper assessment was *was* required to be made, upon the affidavit of the person applying therefor, stating the ground upon which it is claimed, or any other information or evidence satisfactory to the board; but your orator submits, that as said act makes the decision of the board upon such application, your orator could have nothing like a full, fair, adequate remedy against such improper assessment, for inasmuch as said assessment was made by said board, or by any one of them, at least was to determine the justice of the application against the assessment, the matter would, to some extent, be prejudiced against him, and should the decision be adverse to the owner, no appeal therefrom, or to any *any* court or tribunal, is allowed herein, and he is compelled to yield and surrender his property to the judgment of a tribunal unknown to the Constitution, and which is, as respects its powers and proceeding, above it and the laws of the land.

And your orator submits, that from that, as well as from the additional consideration that said levee commissioners are to be elected by a privileged class of electors, that is to say, only and by persons who reside in or cultivate alluvial lands in the county, and subject to be assessed and taxed under provision of said act, and not by the constitutional electors of the State, and that it takes from the county court a portion of its jurisdiction in matters relating to county taxes and disbursements of money for county purposes, and the internal improvement and local concerns of the county, that said act, and the supplementary act thereto, are unconstitutional and void, and that said assessment and tax are illegal, unconstitutional and void, and your orator is not bound by the laws of the land to pay the same.

Your orator further showeth unto your honor, that a portion of said lands in this your orator's bill, is a portion of the swamp and overflowed lands donated to the State of Arkansas by the government of the United States, and by act of the general assembly of

the State of Arkansas were exempt for the term of ten years after the entry or location of said lands, or until the said lands were reclaimed; which purchase was before or previous to the passage of the act of the general assembly of the State of Arkansas, entitled "An act to repeal the 14th section of an act entitled 'An act to provide for the reclamation of swamp and overflowed lands, donated to this State by the United States,' approved 6th January, A. D. 1851, and for other purposes," approved 11th January, 1855, as purchased with swamp land scrip, issued before the passage of said last mentioned act, which last mentioned lands, your orator is advised, is not subject to taxation.

But now, as it is, may it please your honor, Martin R. P. Mathis, who is the sheriff and ex officio tax collector for said county, and whom your orator prays may be made a defendant in this bill, has advertised the said lands of your orator for sale, at the courthouse door in Lake Village, in said county of Chicot, on the 29th day of March, A. D. 1858, for said levee tax, your orator having paid all of the taxes thereon for the year 1857, and is proceeding to sell the same, to satisfy and pay said illegal and unconstitutional, oppressive, and unjust levee tax, and, unless restrained by your honor, will on said day sell them; and your orator has reason to believe, and does so believe, that in consequence of the great doubt existing as regards the constitutionality of said act beforementioned, and on the illegality of such sale will be sold at a great sacrifice, and he will be greatly injured thereby, unless restrained by your honor, thereby putting him to great expense and in all probability involving him in litigation and lawsuits concerning the same.

Inasmuch, therefore, as your orator is remediless by the rules of the common law, and can only have adequate relief in the premises in a court of equity, may it please your honor to grant unto your orator the State's most gracious writ of injunction, issuing out of and under the seal of this honorable court, to be directed to the said Martin R. P. Mathis, as such sheriff and ex officio tax collector, to restrain him and his deputies from selling or appearing to sell the said described lands of your orator, or any part thereof, to pay or satisfy said levee tax, but also the State's most gracious writ of subpœna, commanding the said Martin R. P. Mathis to be and appear before your honor, and full, true, direct, and perfect answers make to all and singular the premises, and further to stand to, perform and abide such further order, direction, and decree therein, as to your honor shall seem meet. And your orator shall ever pray, &c.

HARRISON & HOOKER, *Sol.*

THE STATE OF ARKANSAS,
County of Chicot.

I, William E. Bolling, do solemnly swear that the allegations

and facts set forth in this bill are true, so far as stated on my own knowledge, and so far as stated on the knowledge , he believes to be true, so help me God.

Sworn to and subscribed before me.

W. E. BOLLING.

Order for Injunction.

Theodoric F. Sorrells, judge, having examined the within bill of complaint, and being satisfied that the complainant is entitled to the relief prayed for, the clerk of the circuit court of Chicot county, in the State of Arkansas, is hereby authorized and required to issue a writ of injunction, according to the prayer of the within.

I hereby approve N. B. Hooker as sufficient security on the injunction bond, to be filed with the clerk of said county, before said writ shall be issued by said clerk.

Given under my hand and seal, this the 29th of March, A. D. 1858.

THEODORIC F. SORRELLS, *Judge.*

Endorsed on back: Filed March 29th, 1858.
Attest: S. N. CAUGHEY, *Cl'k.*
By S. L. DORSEY, *D. C.*

Bond for Injunction.

Know all men by these presents, that we, William E. Bowling and N. B. Hooker are held and firmly bound unto the county of Chicot, in the sum of two hundred dollars, for which payment well and truly to be made, we bind ourselves, our heirs and assigns, firmly by these presents, and sealed with our seals this 27th day of March, A. D. 1858.

The condition of the above obligation is such, that whereas the said William E. Bowling has prayed and obtained an injunction restraining said Mathis from selling the lands mentioned in his said bill: Now, therefore, if, upon the final hearing in said cause, the said injunction be made perpetual, then this obligation to be void; otherwise to remain in full force and effect.

W. E. BOWLING. [SEAL.]
N. B. HOOKER. [SEAL.]

Endorsed on back: Filed March 29th, A. D. 1858.
S. N. CAUGHEY, *Cl'k.*

1st Order. Chancery Minutes, March Term, March 29th, 1st day, A. D. 1858.

(Order omitted.)

W. E. BOLLING, Complainant,
vs.
MARTIN R. P. MATHIS, Defendant.

2d Order. Extract Chancery Minutes, March Term, 4th day, April 1st, 1858.

WILLIAM E. BOLLING, Compl't.
vs.
M. R. P. MATHIS, as Sheriff, &c., Def't.

Now, on this day come said parties, by their solicitors, and it is ordered by the court here that this cause stand continued until the next regular term of this court, with leave to said defendant to plead, answer, or demur to complainants' bill of complaint filed herein at said next regular term of this court.

Agreement of Counsel.

3d Order (and last.) Extract Chancery Minutes, October Term, 4th day, October 7th, A. D. 1858.

W. E. BOLLING, Comp't,
vs.
M. R. P. MATHIS, as Sheriff of Chicot county, Def't.

This day come the defendant and complainant, by solicitors, and by agreement and consent the answer of defendant in the cause of Edmund McGee, No. 26, and the exhibits thereto, are to be taken as an answer in this cause, and replication thereto in short, on the record by consent; and by consent this cause came on for final hearing on bill, said answer, exhibits, and the agreement of facts filed in said cause No. 26; and exhibits *was* read in this , and made applicable hereto, and was argued by counsel.

Decree.

And whereupon it is ordered, adjudged, and decreed by the court that the injunction granted in this cause be dissolved, and the bill dismissed for want of equity, and that the defendant recover from the complainant all his costs in this behalf expended.

From which decree the complainant prayed an appeal to the Supreme Court, and the affidavit required by law being waived, such appeal is granted, and the same by consent is to operate as a supersedeas without security.

STATE OF ARKANSAS,
County of Chicot.

I, Benjamin F. Stephenson, clerk of the circuit court in and for said county of Chicot, hereby certify that the annexed and foregoing fifteen pages, and this page, do contain a true and complete transcript of the record and proceedings in the chancery suit of William E. Bowling, complainant, vs. Martin R. P. Mathis, sheriff, &c., defendant, as the same appears from the records and files of my office.

It is further ordered and decreed that said appellee recover of said appellant all his costs in this court in this cause expended, and have execution thereof.

Bond in Error.

And afterwards, to wit, on the 10th day of February, A. D. 1860, came said appellant, by his solicitor, and presented a writ of error issued from the circuit court of the United States for the eastern district of Arkansas, and duly allowed by the chief justice of this court, and filed therewith an appeal bond, in the following words:

Know all men by these presents that we, Augustus H. Garland as principal, and Gordon N. Peay as security, are held and firmly bound unto the said Martin R. P. Mathis in the sum of one hundred dollars, to be paid to the said Mathis, and for the payment whereof well and truly to be made, we bind ourselves, and our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents. Signed and sealed by us respectively, and dated this February 7th, 1860. Conditioned that whereas the above named Bowling has prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered by the supreme court of the State of Arkansas, in the suit there pending on appeal in chancery from the decree of the circuit court of the county of Chicot, in that State, in which suit the said Bowling was appellant: Now, therefore, the condition of this obligation is such, that if the above named Bowling shall prosecute his said writ of error to effect, and answer all costs if he shall fail to make good his plea, then this obligation shall become void; else to remain in full force and virtue.

A. H. GARLAND. [SEAL.]
GORDON N. PEAY. [SEAL.]

STATE OF ARKANSAS.

Having fixed the amount of the foregoing bond at the sum of one hundred dollars, and the securities therein being personally well known to me, and being by me considered sufficient, I do hereby approve the said bond as sufficient, the said writ of error being lodged in the office of the clerk of the supreme court of the State of Arkansas, on this 10th day of February, A. D. 1860.

E. H. ENGLISH,
Chief Justice of the Supreme Court of Arkansas.

In testimony that the foregoing 17 pages contain a full, true, and complete transcript of the record of proceedings of said supreme court in the case therein stated, except the brief of counsel and opinion of the court—

I, Luke E. Barber, clerk of said supreme court, hereto set my hand and affix the seal of said court at my office, [SEAL.] in the city of Little Rock, this 28th day of February, A. D. 1860.

L. E. BARBER, *Clerk*.

UNITED STATES OF AMERICA, *ss*.

The President of the United States of America to the Judges of the Supreme Court of the State of Arkansas, greeting:

Because in the record and proceedings, as also in the rendition of a decree in a certain suit upon an appeal in chancery from the decree of the circuit court of the county of Chicot, in the State of Arkansas, which is in said supreme court of the State of Arkansas, before you, between William E. Bowling, appellant, and Martin R. P. Mathis, as sheriff and appellee, a manifest error hath happened, to the great damage of the said William E. Bowling, as by his complaint it appears, and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in said Supreme Court to be then and there held, that the decree and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and custom of the United States should be done.

Witness the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, this 7th day of February, in the year of our Lord one thousand eight hundred and sixty, and of the independence of the United States the eighty-fourth year.

[L. S.] Attest: A. H. RUTHERFORD,
Clerk of the Circuit Court of the United States for the Eastern District of Arkansas.

The within writ of error is allowed.

E. H. ENGLISH,
Ch. J. Sup. Ct. Ark.

Feb. 10th, 1860.

STATE OF ARKANSAS,
In the Supreme Court, ss.

I, Luke E. Barber, clerk of the supreme court of said State, hereby certify, that in obedience to the mandate of the within writ,

and the allowance thereof, I have made out and certified a complete transcript of the record of the case therein stated, except as in the certificate thereof, which transcript is hereto attached.

In testimony whereof, I hereto set my hand as clerk of said court, and affix the seal of said court at my office, [SEAL.] in the city of Little Rock, this 28th day of February, A. D. 1860.

L. E. BARBER, *Clerk.*

UNITED STATES OF AMERICA, *ss.*

To Martin R. P. Mathis, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the supreme court of Arkansas, wherein William E. Bowling is plaintiff, and you, as sheriff and ex-officio assessor and collector of Chicot county, Arkansas, are defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable E. H. English, chief justice of the supreme court of Arkansas, this 10th February, 1860.

E. H. ENGLISH,
Chief Justice of the Supreme Court of Ark's.

I acknowledge service of the foregoing citation, this 10th of February, 1860, at Little Rock, Ark's.

S. H. HEMPSTEAD,
Sol. for Mathis.

Filed 30th June, 1860.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at office, this the 23d day of December, A. D. 1858.

[SEAL.]

B. F. STEPHENSON, *Clerk*.

And afterwards, to wit, at a supreme court of said State, begun and held on the first Monday in January, A. D. 1859, and on the 6th day, were the following proceedings, to wit:

Agreement of Counsel.

At this day come said appellant and appellee, by their solicitors, and their agreement of record filed in the case of James H. Wilson vs. Martin R. P. Mathis is also filed in this case.

And thereupon, on motion of said appellant, it is ordered that his assignment of errors be filed, and the same is filed.

Which said agreement is as follows:

Whereas Edmund McGehee, James H. Wilson, John J. Jackson & Co., Charles McDermott, Charles C. McDermott, James S. Montgomery, and William E. Bowling, filed their several bills of complaint against Martin R. P. Mathis, sheriff of Chicot county, restraining the collection of levee taxes on certain lands by them owned in said county, and said Mathis appeared and answered the bill filed by said McGehee, and an agreement of counsel was drawn up and signed and filed in said cause stating the facts relative to the matters and things arising in said suit, and by agreement of counsel, entered of record in the Chicot circuit court, said answer of Mathis and the agreement as to the facts, filed in the case of McGehee vs. Mathis, were to be taken and stand as the answer of Mathis and the facts in the other cases; and said causes were heard on such answers and agreement of facts, and the bills severally dismissed and injunctions dissolved; and said complainants appealed to this court, and said causes are now on the docket of this court, numbered from 263, 264, 278, 279, 280, 281, and 284, inclusive; but the transcripts in the said causes, except in the one of McGehee vs. Mathis, No. 264, do not contain the answer of said Mathis and said agreement of facts: Now we, as counsel for said parties, do hereby agree and consent that said answer and agreed state of facts in No. 264 may be taken and considered by the court as portions of the transcripts in the other of said causes, viz: 263, 278, 279, 280, 281, and 284, and hereby waive the necessity of having the same formally incorporated in said transcripts.

GARLAND & RANDOLPH,
For WILSON, MCGEHEE, and JOHN J. JACKSON & CO.
And WM. M. HARRISON and GARLAND & RANDOLPH,
For MCDERMOTT, BOWLING, and MONTGOMERY.
S. H. HEMPSTEAD,
Solicitor for Martin R. P. Mathis.